

LEGAL PROTECTION OF BUSINESS INVESTORS IN NIGERIAN STOCK EXCHANGE

Ajabor Ifeanyi E.

*Directorate of General Studies
Delta State Polytechnic, Ozoro, Delta State, Nigeria
E-mail: attorneyifyaja@yahoo.com*

Benemone E. Osadi

*Department of Business Administration and Management
Delta State Polytechnic, Ozoro, Delta State, Nigeria
E-mail: osaben2007@yahoo.com*

ABSTRACT

This review x-rayed the fundamental areas where investors are protected under some Nigerian laws. However, the rationale behind investors' protection is two fold. Firstly, to protect investors from fraud and secondly to ensure that the security markets work efficiently without suffering from fraud. The study therefore periscoped the legal framework for investors protection, fiduciary duty of directors and the surrounding provisions which enjoins a director to observe utmost good faith, best interest of the company, interest of the employees, powers for proper purpose, duty not to abdicate power and much more. Conclusively, it was recommended among others that investors' protection should be provided under the Nigerian laws supported with proper enlightenment campaign so as to avoid fraud and high interest investment companies from exploiting them.

Keywords: *Investors, shareholders, legal protection, Nigerian law, business*

INTRODUCTION

Investors according to Raimi (2000) refers to those who have an interest in any of the securities of a company. They are those who invest in or subscribe to the shares or debentures of a company by placing their money or other property with the ultimate aim of earning financial benefit usually referred to as dividend. Therefore an investor is a shareholder or stockholder. There is increase awareness among many Nigerians with regards to investment as a result of the 2004/2005 shake up in the Nigerian banking sector. While so many people were sure of huge dividend, others were grieved due to the lost suffered from their investment in the sector.

As rightly observed by Obaban (2001), investment is the blood that gives life to an economy the same way it gives life to human body. It is the basis for economic growth and poverty reduction. The protection of investment and returns on invested capital have remained critical determinants of investors' interest in investments. It is on this premise that this study sets to highlight the legal frameworks for protecting business investors in the Nigerian Stock exchange.

Legal Framework for Business Investors in Nigeria

One of the objectives of the Nigerian Business law or company law as enshrined in the Nigerian Law Reform Commission in the first company reform

exercise in 1991, which is stated in its report of 1990 and cited in Guobadia (2007) was "to evolve a comprehensive body of legal principles and rules governing companies and to protect the interest of the Business investors, as a whole". Ideally, the law makers consider it pertinent to provide Nigerian investors with legal protection owing to the fact that majority of them are ignorant and unsophisticated as regards matters of investment. The annulled Securities and Exchange Commission (SEC) Decree of 1988 had three cardinal objectives identified by Orji (1998) as:

1. To protect the interest of investors and thereby enhance their confidence in the capital market.
2. To ensure orderly, fair and equitable dealings in securities business and
3. To promote the growth and development of the capital market.

Again, the Investment and Securities Act (ISA 1999) revoked the SEC Decree of 1988, and empowers the Securities and Exchange Commission under Section 8, to act in the public interest of having regard to the protection of investors, to protect the integrity of the securities markets against abuses arising from the practice of insider trading, to prevent fraudulent and unfair trade practices relating to the securities industries among others. From the foregoing it is clear that protecting the interest of investors is the paramount significance of these statutes. Some of the legal provisions in specific areas such as disclosure of misleading statements in the prospectus, insider dealing and duty of directors are also given consideration.

The Need for Investors' Protection

The rationale behind investors' protection is two-fold as outlined by Austen Peters (2002). Firstly, it seeks to protect the investors from fraud. Secondly, it seeks to ensure that the securities market works efficiently without suffering from the distortions that would be effected by fraud. It is therefore, in the best interest of the investors and that of the capital market. Hence the efficient running of the capital market such that it gives investors confidence in the system should be nurtured and encouraged. It was illicitly reported that alot of Nigerians see the stock market as a place where shady businesses are transacted, a place for a selected few, unpredictable and dangerous terrain and a place where one is likely to lose money (Mabayoje, 2006).

Investors invest their financial resources in companies where there is assurance that they will get good measure of returns on their investment. This presupposes that any corporate entity should have an efficient and effective corporate management structure. This will build strong confidence in the minds of existing and would-be investors to patronize the shares of such companies with the hope that they will have good returns on their investments. To attain this level of management as noted by Agom (2000), the law regulating companies vests corporate powers on the members and directors to ensure balance of power in a closed system of checks and balances. Thus, the Board of Directors is charged with managerial responsibility, while the investors power is to elect the directors and also determine the company's

mandate in a general meeting popularly known as the Annual General Meeting (AGM). Despite the investment situations in Nigeria, more Nigerians are becoming interested in the activities of the capital market. According to the Nigerian Stock Exchange (NSE) annual reports and accounts, the growths in the capital market in the past two years have been overwhelming such that in 2004 the market capitalization was N2.1 trillion, N2.9 trillion in 2005, and rose to N5.12 trillion in 2006, representing a growth rate of 76.5 percent (Oseghale 2007). With this growth in securities trading, the need to protect the Nigerian investors more than ever before is no longer debatable.

Prospectus and its Contents

The term prospectus according to Section 567 of CAMA 1990 means any notice, circular, advertisement or other invitation, offering to the public for subscription or purchase of shares or debentures of a company and includes any document which serves to the extent that it offers securities for a consideration other than cash. A company uses prospectus to invite members of the public to subscribe for its shares. It is a document used by companies to advertise shares. Section 48 of the Investment and Securities Act (2004) provides that it shall not be lawful to issue any form of application for securities in a public company unless the form is issued with a prospectus of the company.

The ISA by section 57(1) provides that no prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication a copy has been delivered to the Securities and Exchange Commission for registration. By section 50(1) of the Investment and Securities Act, every prospectus issued by or on behalf on a company must state inter alia:

- i. The number of founders or management or deferred shares (if any)
- ii. Directors' qualification shares (if any) and remuneration of the directors as provided in the articles.
- iii. Names, addresses and description of the directors or proposed directors.
- iv. The minimum subscription, which is the amount which in the opinion of the directors, must be raised through the issue in order to provide sums for the following matters.
 - a) The price of any property purchased which is to be paid for out of the proceeds of the issue;
 - b) Any preliminary expenses and undertaking commission payable by the company.
 - c) Repayment of any money borrowed by the company in view of a and b above.
 - d) The amount to be provided in respect of the matters stated in (iv) otherwise than out of the proceeds of the issues and the sources of such amounts.
- v. The time of the opening of the subscription.
- vi. The amount payable on application and allotment on each share.
- vii. Particulars of shares and debentures issued otherwise than for cash.

Liability in Respect of Prospectus

Since potential investors in the company know little or nothing about the company, the contents of a prospectus must include material facts as would enable the investing public to make correct assessment of the true purpose and position of the company. Consequently, the prospectus must not contain false or misleading statements or information. The company and those responsible for the issue of a prospectus that contains misleading facts are liable to criminal or civil offence.

Civil Remedies

This is both under the common law and the CAMA 2004; and they are:

- i. Action by the aggrieved subscriber in damages for fraud. Under section 562 CAMA 2004, he may sue for compensation.
- ii. Action for rescission of the contract of allotment. (section 571)

To succeed in a claim for damages and/or rescission under the common law, such subscriber must prove:

- a. That the misstatement is a material statement of fact
- b. That he was induced by the misrepresentation to subscribe for the shares.
- c. That the misrepresentation was fraudulent and that it was made by a person acting on behalf of the company.
- d. That he suffered loss or damage thereby under the CAMA, to succeed, the aggrieved subscriber must prove that the prospectus contained a misstatement which he relied upon and thereby suffered loss.

Criminal Remedies

By section 563 of CAMA, 2004, any officer of the company who authorizes the issue of a prospectus, or statement in lieu of prospectus which contains untrue statement shall be guilty of an offence and be liable on conviction upon an indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding #5,000 or both; or on summary conviction to a term of 3 months or a fine of #5,000 or both.

Insider Trading

Section 614 CAMA 1990 provided for insider trading. The provision prohibited any director from the knowledge or information at his disposal as an insider to benefit himself. There is no such provision in the Companies and Allied matters Act 2004 for insider trading. However, the section of the Companies and Allied Matter Act 2004 prohibits a director from engaging in any business which conflicts with the interest of the company. The Act also prohibits any directors from unduly disclosing or making use of the company's information to his advantages or the advantage of an insider.

Fiduciary Duties of Directors

Directors are persons appointed to manage and direct the business of the company. Directors therefore occupy a very important and peculiar position, since it

is through them that the company acts. As a result of this peculiar position occupied by directors, several statutory provisions have been put in place to check directors in order to protect investors, thus, the fiduciary duties of directors. This relates to the general duty of the directors to be faithful to the company, the various aspect include the following.

- i. ***Directors must exercise their powers:*** Honesty and in the best interest of the company and shareholders. Whether as trustee or an employee, a director must exercise utmost good faith while acting on behalf of the company even when he is acting gratuitously. The director's power must be exercised for proper purposes and not collateral purposes.
- ii. ***Directors must not make secret profit from the position:*** According to section 287 CAMA, 2004, a director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company in order to introduce his company to deal with such person. If a director contravenes the provision of section 287, 1 of this Act, he commits a breach of duty and the company shall recover from the director the actual gift and then sue him and the other person jointly and severally for damages sustained without any deduction in respect of what the director has returned. Where the gift is made after the transaction has been completed in a form of unsolicited gift, as a sign of gratitude, the director may be allowed to keep the gift provided he declare it before the board and that fact shall appear in the minutes book of the directors. In all cases concerning secret benefits the plea that the company benefited or that the gift was accepted in good faith shall be no defence.
- iii. ***Directors have the duty not to place themselves in a position where their duties and their personal interest conflict:*** By the wording of section 280 1 CAMA, 2004, the personal interest of a director shall not conflict with any of his duties as a director under this Act. Directors in essence must not place themselves in a position where their interest conflict with their duty without making full disclosure, to the general meeting. If they fail to make full disclosure, any contract made in these circumstances may be voidable by the company in equity and the director will be accountable to the company for any profit made out of the transaction.
- iv. ***Directors have a duty not to use for their own benefit, property or confidential information entrusted to them for the company's use:*** By section 280, 5 CAMA the duty not to misuse corporate information shall not cease by a director or an officer having resigned from the company, and it shall still be accountable and can be restrained by an injunction from misusing the information received by virtue of his previous position.

CONCLUSION AND RECOMMENDATIONS

From our discussion so far, it is clear that there are extensive provisions as contained in Nigerian laws for the protection of Business investors. It is also observe that majority of Nigerian investors are not abreast with the protective strategies/practices as prescribed in Nigerian laws, which is prone to exploitation by greedy and fraudulent corporate managers. Precisely, it was recently reported by Adeyemi (2007) that there is proliferation of high interest investment companies whose fund managers promise making their investors instant millionaires but along the line, such fund managers vanish as left the burden to most investors after borrowing huge sum of money from bank for such investment. It is evident too, that the penalties prescribed under the CAMA 2004 and ISA 1988 for such legal protection of investors but with loose attention for implementation.

In order to protect business investors, it is proposed that investor's legal protection in business investment should be strictly ensured by stringent and proactive laws. A regular public enlightenment campaigns should be fashioned out to educate the investors so as to know their rights and duties and where and how to obtain remedy from fraud or total loss of interest of investment. Investors should also be involved in the corporate management in which they are stakeholders. Investors too should either form a new association or join existing shareholders associations, so as to check the activities of Directors at regular intervals. Securities markets supervisors such as NSE and SEC, should be effective and proactive in monitoring their operations regularly.

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